

REMARKS/ARGUMENTS

The Examiner states that the inventions of Groups II and I are related as process of making and product made under M.P.E.P. §806.05(f) and the process, as claimed, can be used to make other and materially different products, such as GaAs, InP, etc.

However, it is not seen how the process, as claimed, which is directed to a method for producing a colored single crystal diamond layer on a diamond substrate which involves providing a source of gas, dissociating the source gas to produce a synthesis atmosphere which contains nitrogen and allowing homoepitaxial diamond growth on the diamond substrate could be adapted to produce the other products listed by the Examiner. The Examiner has provided no reasons to support the position that the listed materially different products could be made by the process of Group II, as claimed.

Further, Claims 37-40 are not drawn to a method, but are drawn to a diamond layer and gem stone, respectively. It is clear that these claims should be grouped with the claims of Group I. Therefore, since the requirements of M.P.E.P. §806.05(f) have not been met and Claims 37-40 are not drawn to a method, it is requested that the claims of Groups II and I be rejoined and examined in the present application.

Further, if the claims of Group I are ultimately found allowable, it is requested that the claims of Group II be rejoined under M.P.E.P. §821.04 and allowed in the present application, also.

Finally, Applicants traverse the restriction requirement on the grounds that the Patent and Trademark Office has not shown that a burden exists in searching all of the claims. Applicants point out that thousands of U.S. patents have issued in which many more than two subclasses have been searched, and the Patent and Trademark Office cannot reasonably assert that a burden exists in searching only two subclasses.

Accordingly, for the reasons presented above, Applicants submit that the Patent and Trademark Office has failed to meet the burden necessary to sustain the restriction requirement. Withdrawal of the restriction requirement is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)
REM/rac



Roland E. Martin
Registration No. 48,082